272 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

XOBJEC-12-2021 IN/AND
FAO-4765-2017 (O&M)
Reserved on: August 23, 2022
Date of pronouncement : September 30, 2022

United India Insurance Company Limited
…Appellant
Vs.
Sukhvir Kaur and others
…Respondents

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Harsh Aggarwal, Advocate
for the appellant.

Mr. Ashish Singh, Advocate and
Mr. AShwani Arora, Advocate
for respondents No.1 to 3/cross-objectors.

Mr. Bhupinder Ghai, Advocate
for respondents No.5 and 6.

<u>ARVIND SINGH SANGWAN, J.</u>

The instant appeal has been filed by the Insurance Company to set aside the award dated 10.3.2017 filed by the respondent-complainant under Section 166 of the Motor Accident Claims Tribunal on account of untimely death of Talvir Singh Sekhon on 18.6.2016. The claimants-respondents have also filed the X-Objections for enhancement of the compensation awarded by the Tribunal.

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Brief facts of the case are that deceased Talvir Singh Sekhon was driving a car bearing registration No. PB-60A-6155 and was going from Patiala towards Hoshiarpur. He was driving the car at a moderate speed. At about 11.15 p.m., a truck bearing registration No.PB-19-H-6232 came from the opposite side. The same was driven by respondent No.1-Baldev Singh on a high speed in a rash and negligent manner and by bringing the same on the wrong side of the road, he hit the car of the deceased. Talvir Singh Sekhon sustained head injuries. In the accident, the front tyre of the truck also got burst and the driver fled away from the spot leaving the truck there.

It is stated that the deceased was pursuing B.A. (Final) year apart from doing a job in Punjab Police as a Head Constable and was earning Rs.35,000/- per month. The deceased was aged about 27 years and had qualified IELTS with a good band and had every potential to go abroad for his further studies.

The respondents No.1 and 2, i.e. the driver and owner filed their written statements and contested the claim on the ground that the truck was not involved in the accident. The appellant-Insurance Company contested the petition on the ground that the driver of the offending vehicle was not holding a valid and effective driving license at the time of the accident.

Under Issue No.1 regarding the rash and negligent driving of respondent No.1, the Tribunal recorded a finding that as per the

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testimony of PW3 Karamjit Singh, an eye-witness, who explained the manner in which the accident was caused due to rash and negligent driving of respondent No.1 by driving his truck No.PB-19-H-6232 in such a reckless manner that it caused accident with the car of the deceased, therefore, the rash and negligent driving of respondent No.1 is proved. Even the FIR No.93 dated 19.6.2016 under Sections 279, 427, 304-A IPC was registered at Police Station Rahon, District SBS Nagar against respondent No.1.

The trial Court also relied upon Ex.PX, the copy of final report filed under Section 173 Cr.P.C. as well as an important fact that the respondent No.1-driver of the offending vehicle did not appear in the witness-box either to controvert the allegations of accident or the rash and negligent driving in causing the accident. Even nothing has come on record that the respondent No.1 has contested the registration of the FIR before the higher police officials alleging that he has been falsely implicated in the same.

The Tribunal while deciding Issue No.3 regarding a valid license of respondent No.1 further held that as per the license of respondent No.1 Ex.R1-2/2, he was holding a valid and effective driving license at the time of the accident.

While deciding Issue No.2 regarding the assessment of compensation, the Tribunal held that deceased Talvir Singh Sekhon, was posted as a Constable with the Punjab Police at the time of his death

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and as per his salary certificate Exs.P25 and P26, he was drawing a salary of Rs.34,206/- per month. Therefore, by adding 50% towards future prospects and by deducting 20% income tax, the income was assessed to be Rs.5,38,566/- per annum. Since the deceased was unmarried, 50% deduction was made from the personal expenses and by applying the multiplier of '17', a total compensation of Rs.45,77,811/- was awarded, apart from Rs.25,000/- towards funeral expenses.

It is worth noticing that cross-objections have been filed by the respondent-claimant for enhancement of compensation and notice in the same has already been issued to the contesting-respondent-appellant-Insurance Company. In the cross-objections, it is stated that the interest should be awarded at the rate of 12% per annum and the deduction should be made at the rate of 1/3rd, instead of 50%.

Counsel for the appellant-Insurance Company has argued that since PW3 Karamjit Singh, an eye-witness was known to the deceased, therefore, his veracity is doubtful and he can be a planted witness. The counsel further submits that PW2 Gurdeep Singh could not name the eye-witness, which also makes the statement of PW3 doubtful.

Counsel for the appellant further submits that the FIR was got registered by PW2 Gurdeep Singh and not by PW3 Karamjit Singh, which again is a doubtful circumstance. Counsel for the appellant has also submitted that there is a delay of one day in lodging of the FIR as the accident had taken place on 18.6.2016, whereas the FIR was

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registered on 19.6.2016. It is also submitted by the counsel for the appellant that since the deceased himself was a police employee, therefore, the FIR was registered by his department without verifying the facts.

Counsel for the appellant has further argued that the Tribunal has awarded the compensation on a higher side as PW1 Sukhvir Kaur is also working in the department of Town and Country Planning and was getting handsome salary. Therefore, she was not dependent on the deceased and the dependency of 50% is taken on a higher side. Counsel for the appellant further argued that claimant Ramanjot Kaur, is the step sister of the deceased and, therefore, she is not entitled to any compensation. It is also argued that the deceased was on probation and was not a permanent employee, therefore, his salary has wrongly been taken into account.

In reply, counsel for the respondent-claimant as well as cross-objector has submitted that it has come in the statement of the claimants witnesses that the accident was caused due to rash and negligent driving of respondent No.1. Counsel for the respondent has argued that no evidence to the contrary is proved that respondent No.1 has not caused the accident as he has not even opted to appear as his own witness to controvert this fact. It is also argued that an FIR was registered against respondent No.1 in which after proper investigation, challan has also been presented and he is facing the criminal trial.

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Counsel for the respondent further submitted that as per the salary certificate, the Tribunal has rightly taken the income to be Rs.34,206/- per month. However, the counsel has submitted that instead of taking the 50% dependency, considering the fact that the respondents are dependent on the deceased, the dependency should have taken to be 2/3rd of the income of the deceased and, therefore, the amount of compensation be enhanced.

The details of the amount awarded by the Tribunal, as per the counsel, are as under :-

Monthly Income	Rs.34,206/-
Future @50%	Rs.17,103/-
Total Income	Rs.51,309/-
Annual Income	Rs.6,15,708/-
20% Tax Deduction	Rs.77,142/-
Balance Income	Rs.5,38,566/-
Dependency 50%	RS.2,69,283/-
Multiplier	17
Dependency	Rs.45,77,811/-
Funeral Expenses	Rs.25,000/-
Total amount awarded	Rs.46,02,811/-

After hearing the counsel for the appellant and in view of the well settled principle of law, the Court finds that the amount awarded by the Tribunal needs to be modified on the following points :-

(a) In view of the judgment of the Hon'ble Supreme Court in **NIC Vs. Praney Sethi, 2017 ACJ 2700**, the future prospects is to be given at the rate of 40% instead of 50%, as awarded

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by the Tribunal. However, the deduction of 20% of income tax, as per the tax liability for the financial year 2016-17 should be 10%, instead of 20% as taken by the Tribunal.

(b) Apart from this, the claimants are entitled for loss of consortium for claimants Kulvir Kaur and Ramanjit Kaur, being mother and sister only to a tune of Rs.80,000/-; funeral expenses to a tune of of Rs.40,000/- and loss of estate to a tune of Rs.15,000/-.

(c) Similarly, the amount of interest instead of 8% should be awarded at the rate of 7.5% per annum and, accordingly, the award is modified in the following manner :-

Monthly Income		Rs.34,206/-	
Annual Income (34206x12)		Rs.4,10,472/-	
Tax Liability for Financial Year 2016-17		Taxable income	
Upto Rs.2,50,00/-	Nil		0
Rs.2,50,000/- Rs.5,00,000/-	10%	Rs.1,60,472/-	Rs.16,047/-
		Tax	Rs.16,047/-
Balance income after deduction of TAX		Rs.3,94,425/-	
Future increase @ 40% (*NIC Vs. Praney Sethi, 2017 ACJ 2700)*		Rs.1,57,770/-	
Total income		Rs.5,52,195/-	
Dependency 50%		Rs.2,76,097/-	
Multiplier		17	
Dependency		Rs.46,93,657/-	
Loss of Consortium (for 2 claimants) (as per *NIAC Vs. Somwati, 2020 SCJ 1617*		Rs.80,000/-	
Funeral Expenses		Rs.40,000/-	

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Loss of estate	Rs.1,50,000/-
Total Amount to be awarded	Rs.49,63,657/- along with 7.5% interest from the date of filing of the case.

Accordingly, the present appeal filed by the Insurance Company is dismissed and the X-Objection, filed by the claimants-respondents, is partly allowed in terms of the aforementioned modifications.

(ARVIND SINGH SANGWAN)
JUDGE

September 30, 2022
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Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No

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